No. 83-1589

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

CITY OF NORTH OLMSTED, OHIO,
Petitioner,

vs.

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether alleged anticompetitive acts of an Ohio Regional Transit Authority, which were fully authorized by the Ohio legislature in an area of statewide concern and which were approved by the Courts of Ohio in litigation between Petitioner and Respondent Regional Transit Authority, constitute state action in furtherance of affirmatively expressed state policy and therefore are exempt from the operation of the federal antitrust laws?

2. Whether Petitioner is precluded under prevailing principles of res judicata and collateral estoppel from relitigating, under the guise of an antitrust claim, issues of law and fact previously decided by Courts of competent jurisdiction in litigation between the identical parties.

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COUNTERSTATEMENT OF THE CASE

Notwithstanding the fact that the Petition and arguments advanced therein center about the applicability of the state action exemption to the antitrust laws of the United States, this litigation is a contrived rather than true antitrust case.

In October of 1981, shortly after the conclusion of protracted state court litigation between Petitioner and Respondent in which all issues had been decided favorably

to Respondent, Petitioner commenced the proceedings below by filing an ostensible antitrust complaint with the United States District Court for the Northern District of Ohio. The complaint was little more than a restatement of claims made by Petitioner in the Courts of the State of Ohio. Petitioner simply superimposed upon allegations previously made and adjudicated under Ohio law, a veneer of antitrust allegation and sought relief similar to that which the Courts of Ohio consistently denied.

The relief for which Petitioner prayed was, indeed, the antithesis of remedies generally sought under the antitrust laws. The complaint asked, first, that Respondent be enjoined from competing with Petitioner in providing public transportation services within Petitioner's municipal boundaries and, secondly, sought an order requiring that Respondent reinstitute a prior contractual relationship between the parties litigant under which Respondent subsidized Petitioner's municipal bus line. Competition, far from being the polestar of Petitioner's antitrust claim, was an evil to be enjoined.

In fact, Petitioner's purported antitrust complaint so closely tracked the allegations made by it under state law that Petitioner reasserted a pendant claim under the Ohio Constitution which had previously been adjudicated by the Ohio Courts and which the Supreme Court of Ohio had dismissed for want of substantiality.

As a consequence of the litigation in the court of Ohio between the identical parties, there was a complete record of factual findings and legal determinations upon which the District Court could and did issue a summary judgment against Petitioner. The undisputed facts are as follows:

Petitioner operates a municipally owned bus commuter service. For many years Petitioner was one of several

municipal bus lines providing mass public transportation service in Cuyahoga County, Ohio, which includes the City of Cleveland and more than fifty suburban communities.

Until 1975 the City of Cleveland operated a municipal transit service within Cuyahoga County, Ohio as did various other cities, including Petitioner. In December 1974, the legislative authorities of the City of Cleveland and Cuyahoga County enacted resolutions establishing a regional transit authority in accordance with the terms of the Ohio Regional Transportation Act (§§ 306.30 *et seq.* Ohio Revised Code). The startup of the Regional Transit Authority thus formed was contingent upon the enactment of a county-wide tax issue which was passed by a substantial majority of county electors in the summer of 1975 including the electors of petitioner city. Shortly after the passage of that tax, Cleveland and the City of Shaker Heights, a major suburb adjacent to Cleveland, transferred their respective transit systems to Respondent without monetary consideration other than a return of taxpayer investment. Other municipalities, including Petitioner, retained ownership of their municipal systems and entered into contracts with Respondent Transit Authority under which the municipalities continued to operate their municipal bus lines in return for full subsidy of their operations by Respondent. In the years which followed Respondent acquired other publicly and privately owned transit systems operating in the County. These acquisitions were in full compliance and conformity with the Ohio Regional Transportation Act authorizing such acquisitions. Even the contract between Petitioner and Respondent contemplated that after a two-year period of operation, Respondent might acquire all of Petitioner's transit facilities and consolidate those facilities with Re-

spondent's other operations. Petitioner and Respondent conducted negotiations for acquisition and consolidation of Petitioner's facilities. In 1979, when those negotiations reached an impasse, both parties turned to the Courts of the State of Ohio for a determination of their respective rights and responsibilities under the Ohio Regional Transportation Act.

Petitioner and Respondent each brought declaratory judgment actions regarding their rights, duties and obligations to one another both under their subsidy contract and Ohio law in the Court of Common Pleas of Cuyahoga County, the Ohio Court of general trial jurisdiction. The matter was heard in 1980 and in September of that year the State Court issued its judgment in favor of Respondent. That judgment followed an extensive trial and was predicated upon findings that Respondent had fulfilled all of its contractual responsibilities to Petitioner and had never attempted wrongfully to coerce Petitioner to transfer its bus line to Respondent. The declaratory judgment of the Ohio Court held:

> 1. Respondent was a properly formed Ohio Regional Transit Authority created in accordance with provisions of §§ 306.30 *et seq.* of the Ohio Revised Code and possessed a territorial jurisdiction coextensive with the county in which it is situated.
>
> 2. The Respondent was, at all times, under a statutory duty to provide transportation service to riders throughout the County, including the ridership of Petitioner City.
>
> 3. The subsidy contract between Petitioner and Respondent had expired;
>
> 4. Respondent had no continuing contractual obligation to Petitioner nor any Ohio statutory or

common law duty to continue its contractual relationship with Petitioner or to distribute tax proceeds to petitioner;

5. Neither the Constitution nor the statutes of Ohio prohibit Respondent from operating transit services parallel to or in competition with Petitioner;

6. Ohio municipal corporations, including Petitioner, are not granted freedom from competition in the operation of their municipally owned systems; and

7. It is the legal duty of Respondent to implement and to maintain county-wide regional transportation service. That duty shall be performed by Respondent by any feasible means within its discretion including acquisition of Petitioner's bus line or operation of transit services in competition with Petitioner.

That decision was affirmed by the Court of Appeals of Cuyahoga County, which held:

> *"In the cause sub judice, Chapter 306 is a legislative enactment by the legislature of Ohio in an area of statewide concern, public transportation.* While such legislation does not conflict with the power of municipalities to own and operate their own transit system, a municipality cannot override the powers of regional transit systems, authorized by state legislation to operate such systems throughout their jurisdictions, including municipalities which be within a county-wide transit authority." (emphasis added)

The State Court of Appeals also held that the Ohio Constitutional provision relied upon by Petitioner (Article XVIII, Section 4, Ohio Constitution) did not grant Petitioner exclusive territorial rights within its corporate bounds, holding that the State Constitutional provision in

question was merely a permissive authorization of municipal utility services.

Petitioner then appealed to the Supreme Court of Ohio, which dismissed that appeal *sua sponte* for lack of a substantial State Constitutional question. Then and only then did Petitioner advance its purported antitrust claims in Federal Court.

Shortly after the filing of the complaint below, Respondent moved the District Court for summary judgment. On the basis of the record before it which included extensive findings of facts and conclusions of law issued by the trial court and affirmed by the Court of Appeals of the State of Ohio, the Federal District Court granted summary judgment in favor of Respondent. With respect to the antitrust counts of the complaint that Court concluded that:

1 ". . . the State of Ohio, as an act of government authorized the establishment of regional transit authorities . . . for the express purpose of providing a unified and dependable public transportation service . . ."

2 ". . . GCRTA, by engaging in the conduct which is the subject of North Olmsted's complaint is acting under authority granted to it by the Ohio legislature . . ." and that therefore

3 ". . . the activities of GCRTA are exempt from the scope of the federal antitrust laws, including Section 2 of the Sherman Antitrust Act."

In addition, the Court granted summary judgment to Respondent on the pendant claim advanced by Petitioner under the Ohio Constitution since the issue had been definitively adjudicated by the State Courts.

Appeal was then taken by Petitioner to the United States Court of Appeals by the Sixth Circuit. That Court gave full consideration of all applicable authorities in-

cluding this Court's decision in *Community Communications Co. Inc.* v. *City of Boulder,* 455 U.S. 40, 102 S. Ct. 835, 70 L. Ed. 2d 810 (1982) which was decided shortly after the issuance of summary judgment by District Court. The Court of Appeals on December 2, 1983, affirmed the judgment of the District Court in all respects, holding that:

> "Based on the authoritative interpretation of the Ohio Regional Transportation Act given by the Ohio courts, we conclude that the actions of GCRTA alleged in North Olmsted's complaint were contemplated and authorized by state law and constituted state or state subdivision action in furtherance of "affirmatively expressed state policy . . . Accordingly, North Olmsted is precluded from maintaining its antitrust cause of action."

The Opinion of the Court of Appeals is reported at 722 F. 2d 1284.

Thereafter, Petitioner filed its Petition for a Writ of Certiorari with this Court.

REASONS FOR DENYING THE WRIT

I. This is not a case of compelling importance warranting review by this Court.

Although the State action exemption to the antitrust laws has been scrutinized by this Court on several occasions during recent years, Petitioner has failed to show any special, important or otherwise compelling reason warranting the granting of a Writ of Certiorari in this case.

The District Court and the Court of Appeals, fastidiously applied basic principles of law enunciated by this

Court. Those Courts correctly determined that under the facts alleged by the Petitioner, viewed in light of definitive determinations of fact and law by the Ohio Courts, Petitioner was precluded from maintaining its antitrust claims as alleged in its complaint. Both lower Courts also correctly applied the doctrine of *res judicata* in holding that Petitioner's claim under the Ohio Constitution, having been decided under State law, could not therefore be relitigated in the Federal Judicial System.

The sole issue raised by Petitioner is whether the decision of the Sixth Circuit was consistent with the decision of this Court in *Communications Co., Inc.* v. *City of Boulder, supra.* It is readily apparent that the Court of Appeals faithfully applied *Boulder* as well as all other decisions of this Court on the State Action exemption to Federal Antitrust laws.

II. By authorizing the creation of regional transit authorities and granting those authorities extensive defined powers to provide public mass transit services, the Ohio legislature clearly articulated and affirmatively expressed the policy of the State of Ohio in an area of state wide concern: public transportation.

The General Assembly, Ohio's legislature, by valid statutory enactment and in pursuance of a statewide concern with public transportation, enacted a regional transportation act (§ 306.30 *et seq.* Ohio Revised Code). That Ohio statute sets forth with specificity the powers of regional transit authorities. Ohio regional transit authorities are established for all encompassing purposes of "acquiring, constructing, operating, maintaining, replacing, improving and extending transit facilities" (Ohio Revised Code, Section 306.31). Such regional authorities are empowered to extend their transit operations throughout and beyond their territorial boundaries, levy and collect taxes,

issue bonds, and acquire transit facilities owned by counties and municipal corporations. They are further empowered to purchase transit systems and franchises, enter into contracts for operation of existing transit facilities, secure grants or loans from the Government of the United States, exert the right of eminent domain, contract with other governmental entities and perform numerous other acts conforming with the basic purpose of providing unified and reliable transportation services throughout their territorial jurisdiction (Ohio Revised Code Section 306.35). The only pertinent limitation upon the described powers of Ohio Regional Transit Authorities is that such authorities may not appropriate the property of municipal corporations without the consent of the affected municipality (Ohio Revised Code 306.36 (B)).

It is the implementation by Respondent of these wide ranging powers which Petitioner opposed, first in the Courts of Ohio, and then, upon an antitrust theory, in this litigation.

III. The Ohio legislature contemplated that regional transit authorities would be the dominant providers of public transportation within their territorial jurisdictions.

The case at bar, however, is one in which the application of the state action exemption is clearly appropriate. Unlike the cities of Lafayette, Louisiana or Boulder, Colorado which provide a multiplicity of municipal services, respondent transit authority was created by the Ohio Legislature for one specific purpose: the provision of unified and dependable public transportation service throughout a clearly defined geographical area in a manner prescribed and authorized by Ohio statute.

All activities of the Respondent complained of below occurred as a consequence of Respondent's endeavor to

fulfill its statutory mission in accordance with requirements of Ohio law. It is particularly noteworthy that the Ohio courts in determining the duties and obligations of Respondent emphasized that Respondent was legally obligated to provide continuing transit service to its suburban ridership at then current levels of quality and frequency and that respondent was therefore required to implement and maintain the required degree of countywide service by any feasible method including purchase of suburban lines or the operation of parallel transit lines in competition with suburban transportation systems. In no case relied upon by Petitioner, and in no case decided by this Court, was there a comparably definitive exposition by State Courts concerning the statutory obligations of a state subdivision or the relationship between two governmental bodies providing service in competition with one another.

IV. Respondent's activities, pursuant to clearly articulated state policy, are immune from the operation of the antitrust laws of the United States.

Any rational discussion of the applicability of the state action exemption defense must, of course, focus on the decisions of this Court in *Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389 98 S. Ct. 1123 55 L. Ed. 2d 364 (1978) and *Community Communications Co., Inc.* v. *City of Boulder, supra,* which define the circumstances under which the state action exemption formulated in *Parker* v. *Brown,* 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943) is available to subdivisions of the state.

In *Lafayette* this Court concluded that a municipality or other political subdivision of a state is not exempt from the antitrust laws simply because of its governmental status, holding that the state action doctrine exempts only anticompetitive conduct engaged in by a subdivision pursuant

to articulated state policy to displace competition with regulation or monopoly services. The plurality opinion pointedly noted that the subdivision need not be able to point to a specific legislative authorization as a prerequisite to assertion at the state action defense. An adequate State mandate exists when it is found "from the authority given to a governmental entity . . . that the legislature contemplated the kind of action complained of." (435 U.S. Ct. 415).

The legislative grant of authority to Respondent clearly meets the Lafayette test. Petitioner's complaint alleged monopolization and an attempt to monopolize in claimed controvention of Section 2 of the Sherman Act. The Ohio Regional Transportation Act grants Respondent vast powers of operation, extension and acquisition from which it must be necessarily inferred that the Ohio Legislature contemplated that Respondent shall become principal purveyor of public transportation in Cuyahoga County, Ohio. To be sure, there is not written large in the Ohio Statute a mandate to Respondent that "thou shalt monopolize." It is equally true that the concept of consolidated regional transportation service, which is the very purpose of the Ohio Statute, contemplates market dominance in public transportation. We freely acknowledge that such dominance does exist, Respondent having been formed in 1975 about a nucleus of the two largest transit systems in its territorial jurisdiction: those formerly owned by the Cities of Cleveland and Shaker Heights. Indeed, even the ultimate acquisition of Petitioner's transit facilities was contemplated by both parties at the time they entered into the original subsidy contract.

Boulder arose from circumstances drastically different than those of this case. In *Boulder* the dispute arose between a private corporation and a home-rule municipality.

In this case the dispute is between two political subdivisions of the State of Ohio. In *Boulder* the position of the State of Colorado was one of total neutrality and there was no state legislative authorization for the actions of the city. In the instant case, the State of Ohio as an act of government has authorized the establishment of regional transit authorities, defined the territorial jurisdiction within which such authorities may operate, and delineated the rights, powers, and duties with the greatest of specificity in the Ohio statute. Unlike *Boulder* or any other antitrust case before this Court, the rights, duties and obligations between the parties litigant have been fully adjudicated by the State Courts, which concluded that Respondent acted at all times in accordance with its mandate from the Ohio legislature.

The situation in the case at bar contrasts starkly with that of *Boulder,* which involved a state governmental framework in which home-rule cities were free to formulate local policy in the absence of any reservation of power by the state. Such a vacuum of authority, this Court logically concluded, does not meet the test formulated in *Lafayette.* Thus this Court emphasized:

> "Under the plurality's standard, the Parker doctrine would shield from antitrust liability municipal conduct engaged in" pursuant to state policy to displace competition with regulation or monopoly public service. This was simply a recognition that a State may frequently choose to effect its policies through the instrumentality of its cities and towns. It was stressed, however, that the "state policy" relied upon would have to be "clearly articulated and affirmatively expressed."

Petitioner earnestly argues that the policy of Ohio like that of Colorado was one of total neutrality. That argument will not withstand scrutiny. The Ohio Legislature,

reacting to a judicially determined matter of statewide concern, authorized the establishment and operation of regional transit authorities. It granted to those authorities a wide range of powers to effect the governmental purpose of providing regional transportation service. Ohio therefore clearly addressed the issue of public transportation. By way of contrast Colorado simply delegated to its cities the responsibility for local government and did not address the issue which was the subject of the dispute in *Boulder*. The only policies involved in *Boulder* were those of the city, not of the State.

V. Any requirement of State supervision has been met in this case.

Significantly Petitioner does not argue that State supervision is either absent or required. This court in *Boulder* did not reach the question of whether the active state supervision test is applicable in cases involving a claim of anti-competitive conduct by state subdivisions (455 U.S. at 51, fn. 14). That test of course was the focal point of this Court's decision in *California Retail Liquor Dealers Ass'n.* v. *Midcal Aluminum Inc.* 455 U.S. 97, 100 S. Ct. 937, 63 L. Ed 2d 233 (1980). In *Midcal* it was determined that the State of California passively accepted, yet affirmatively enforced, prices set by private parties. This Court held that under such circumstances State supervision is an essential ingredient prerequisite to immunity from Sherman Act challenge, and denied immunity.[1] (455 U.S. at 106). The case at bar involves a far different situation.

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[1] We believe the better view to be that the requirement of supervision is legally and logically applicable only in cases such as Midcal in which state policy sanctions private anticompetitive activity. That issue is appropriate for decision in cases other than this.

Here, a statutorily created Board implements State policy in a manner sanctioned by the State's Courts. The element of State participation and supervision is therefore present.

The facts of this case bear close analogy to those of *New Motor Vehicle Bd. vs. Orrin W. Fox Co.*, 439 U.S. 96, 99 S. Ct. 403 58 L. Ed. 2d 361 (1978). In this case as in *New Motor Vehicle Board*, participation by a statutory board directly in the implementation of articulated state policy satisfies any requirement of supervision. See also such well-considered lower court decisions as *Euster* v. *Eagle Downs Racing Association*, 677 F.2d 992 (3d Cir. 1982), *cert. den.* 103 S. Ct. 388, and *Benson* v. *Arizona State Board of Dental Examiners*, 673 F.2d 272 (9th Cir. 1982) in which administration by statutorily created boards met the "active supervision" test.

Assuming *arguendo* that any further element of State supervision is necessary, under Ohio law all determinations of State Boards are subject to judicial review under Section 2506.01 *et seq.* of the Ohio Revised Code. Alternatively, any person interested in the construction of an Ohio statute may seek a judicial construction of the statute under Ohio's variant of the Uniform Declaratory Judgment Act as set forth in Ohio Revised Code Section 2721.03 and related sections. Indeed, the latter avenue was that pursued by both Petitioner and Respondent in the Ohio Courts prior to the commencement of the proceedings below.

VI. Petitioner's attempt to relitigate issues determined by the Courts of the State of Ohio is precluded by the doctrines of res judicata and collateral estoppel.

From 1979 through late 1981 Petitioner and Respondent engaged in litigation in the Courts of the State of Ohio concerning their respective obligations, one to the other, under Ohio law. As a consequence of that litigation, extensive findings of fact were issued and determinations were made about the applicability of certain provisions of the Ohio Constitution and the nature and extent of the powers granted to Respondent by the Ohio Regional Transportation Act (Section 306.30 *et seq.* Ohio Revised Code). The Ohio Courts found that Respondent had fulfilled all its contractual obligations to Petitioner and had not improperly attempted to coerce Petitioner to transfer its transit system to Respondent. Those Courts concluded that Respondent was required by Ohio law to conduct its transportation services throughout its territorial jurisdiction and had full authority under Ohio law to conduct those operations in competition with Petitioner, if necessary. It was held in Ohio that Article XVIII, Section 4 of the Ohio Constitution permitting Petitioner to provide utility services did not give Petitioner an exclusive franchise to provide public transportation within its own municipal boundaries or freedom from competition.

The Court below properly decided that Petitioner might not relitigate its pendant claim under the Ohio Constitution. That decision is so supported by universally accepted principles of res judicata that little further argument is required. In addition, it is obvious that many of the other claims which Petitioner attempts to raise in this case were conclusively determined by the Ohio Courts. Petitioner may not here contest findings of fact made in

Ohio or legal determinations issued by the Courts of that State. The traditional adherence of the federal courts to the doctrines of res judicata and collateral estoppel has been stated by this Court on numerous occasions. Thus in the case of *Montana* v. *United States,* 440 U.S. 147, 99 S. Ct. 970, 59 L. Ed. 2d 210, (1979), this Court in determining that a Constitutional issue raised by the government of the United States was preclusively barred because of prior State Court litigation pointed out:

> "A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . .' . . . . Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action . . . . Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation . . . . Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions . . . . To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." (440 U.S. at 153-154)

In the same vein are *Allen* v. *McCurry*, 449 U.S. 90, 101 S. Ct. 441, 66 L. Ed. 2d 308 (1980); *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1978); *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 75 S. Ct. 865, 99 L. Ed. 1122 (1955).

In sum, Petitioner's pendant claim under the Ohio Constitution is barred by res judicata. Its contentions with respect to alleged coercion by Respondent and arguments concerning the interpretation to be accorded to the applicable provisions of Ohio law are precluded by collateral estoppel.

CONCLUSION

Petitioner has failed to raise any issue which warrants the scrutiny of this Court. Most assuredly, this Petitioner should not be permitted to utilize the federal antitrust laws to circumvent the public policy of Ohio and decisions issued by the Courts of that State with respect to regional transportation authorities. Significantly, Petitioner has not alleged any act by the Respondent Transit Authority which is either inconsistent with or contrary to Ohio statutes authorizing the creation and operation of such authorities.

This case has been fully litigated before, albeit upon a different legal theory. Petitioner attempts to contest matters which it had a full and fair opportunity to litigate in the State Courts. Respondent should be protected from the expense and vexation of further litigation of this state lawsuit. The valuable resources of this Court should be

reserved for weightier matters. The Writ must therefore be denied.

Respectfully submitted,

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APPENDIX

SECTION 306.31

OHIO REVISED CODE

306.31 Creation of authority

A regional transit authority may be created in the manner provided in section 306.32 of the Revised Code, for any one or more of the following purposes: acquiring, constructing, operating, maintaining, replacing, improving, and extending transit facilities; controlling and administering the public utilities franchise of such transit facilities; entering into and supervising franchise agreements; accepting assignment of and then supervising an existing franchise agreement; and accepting assignment of and exercising a right to purchase a transit system in accordance with the acquisition terms of an existing franchise agreement. A regional transit authority so created is a political subdivision of the state and a body corporate with all the powers of a corporation, comprised of the territory of one, or two or more counties, municipal corporations, townships, or any combination thereof, provided, that each county, municipal corporation, or township included within a regional transit authority shall be a county which is, or be located in a county which is or is contiguous to a county which is, or in which a municipal corporation or township is located which is, included in such regional transit authority.

SECTION 306.35
OHIO REVISED CODE

306.35 Powers and duties

Upon the creation of a regional transit authority as provided by section 306.32 of the Revised Code, and upon the qualifying of its board of trustees and the election of a president and a vice-president, the authority shall exercise in its own name all the rights, powers, and duties vested in and conferred upon it by sections 306.30 to 306.53 of the Revised Code. Subject to such reservations, limitations, and qualifications as are set forth therein, the regional transit authority:

(A) May sue or be sued in its corporate name;

(B) May make contracts in the exercise of the rights, powers, and duties conferred upon it;

(C) May adopt and at will alter a seal and use such seal by causing it to be impressed, affixed, reproduced, or otherwise used, but failure to affix the seal shall not affect the validity of any instrument;

(D) May adopt, amend, and repeal bylaws for the administration and operation of transit facilities under its jurisdiction, and for the exercise of all of its rights of ownership therein;

(E) May fix, alter, and collect fares, rates, and rentals and other charges for the use of transit facilities under its jurisdiction to be determined exclusively by it for the purpose of providing for the payment of the expenses of the regional transit authority, the acquisition, construction, improvement, extension, repair, maintenance, and operation of transit facilities under its jurisdiction, the payment of principal and interest on its obligations, and to

fulfill the terms of any agreements made with purchasers of holders of any such obligations, or with any person or political subdivision;

(F) Shall have jurisdiction, control, possession, and supervision of all property, rights, easements, licenses, moneys, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to it;

(G) May acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries, considered necessary to accomplish the purposes of its organization and make charges for the use of transit facilities;

(H) May levy and collect taxes as provided in sections 306.40 and 306.49 of the Revised Code;

(I) May issue bonds secured by its general credit as provided in section 306.40 of the Revised Code;

(J) May hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell real and personal property, or any interest or right therein, within or without its territorial boundaries, for the location or protection of transit facilities and improvements and access thereto, the relocation of buildings, structures, and improvements situated on lands acquired by the regional transit authority, or for any other necessary purpose, or for obtaining or storing materials to be used in constructing, maintaining, and improving transit facilities under its jurisdiction;

(K) May exercise the power of eminent domain to acquire property or any interest therein, within or without its territorial boundaries, which is necessary or proper for the construction or efficient operation of any transit fa-

cility or access there to under its jurisdiction in accordance with section 306.36 of the Revised Code;

(L) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the making of necessary surveys, appraisals, and examinations preliminary to the acquisition or construction of any transit facility and the amount of the expense thereof to be paid by each such county or municipal corporation;

(M) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the acquisition, construction, improvement, extension, maintenance, or operation of any transit facility owned or to be owned and operated by it or owned or to be owned and operated by any such country or municipal corporation and the terms on which it shall be acquired, leased, constructed, maintained, or operated, and the amount of the cost and expense thereof to be paid by each such county or municipal corporation;

(N) May issue revenue bonds for the purpose of acquiring, replacing, improving, extending, enlarging, or constructing any facility or permanent improvement which it is authorized to acquire, replace, improve, extend, enlarge, or construct, including all costs in connection with and incidental to such acquisition, replacement, improvement, extension, enlargement, or construction, and the financing thereof, as provided by section 306.37 of the Revised Code;

(O) May enter into and supervise franchise agreements for the operation of a transit system;

(P) May accept the assignment of and then supervise

an existing franchise agreement for the operation of a transit system;

(Q) May exercise a right to purchase a transit system in accordance with the acquisition terms of an existing franchise agreement; and in connection with such purchase the regional transit authority may issue revenue bonds as provided by section 306.37 of the Revised Code or issue bonds secured by its general credit as provided in section 306.40 of the Revised Code;

(R) May apply for and accept grants or loans from the United States, the state, or other public body for the purpose of providing for the development or improvement of transit facilities, mass transportation facilities, equipment, techniques, methods, or services, and grants or loans needed to exercise a right to purchase a transit system pursuant to agreement with the owner of such transit facilities, or for providing lawful financial assistance to existing transit systems; and may provide any consideration which may be required in order to obtain such grants or loans from the United States, the state, or other public body, either of which grants or loans may be evidenced by the issuance of revenue bonds as provided by section 306.37 of the Revised Code or general obligation bonds as provided by section 306.40 of the Revised Code;

(S) May employ and fix the compensation of consulting engineers, superintendents, managers, and such other engineering, construction, accounting and financial experts, attorneys, and other employees and agents necessary for the accomplishment of its purposes;

(T) May procure insurance against loss to it by reason of damages to its properties resulting from fire, theft, accident, or other casualties or by reason of its liability for any damages to persons or property occurring in the con-

struction or operation of transit facilities under its jurisdiction or the conduct of its activities;

(U) May maintain such funds as it considers necessary for the efficient performance of its duties;

(V) May direct its agents or employees, when properly identified in writing, after at least five days' written notice, to enter upon lands within or without its territorial boundaries in order to make surveys and examinations preliminary to the location and construction of transit facilities, without liability to it or its agents or employees except for actual damage done;

(W) May, on its own motion, request the appropriate zoning board, as defined in section 4563.03 of the Revised Code, to establish and enforce zoning regulations pertaining to any transit facility under its jurisdiction in the manner prescribed by sections 4563.01 to 4563.21 of the Revised Code;

(X) Shall, if it acquires any existing transit system, assume all the employer's obligations under any existing labor contract between the employees and management of the system. The board shall, if it acquires, constructs, controls, or operates any such facilities, negotiate arrangements to protect the interests of employees affected by such acquisition, construction, control, or operation. Such arrangements shall include, but are not limited to:

(1) The preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise, the preservation of rights and benefits under any existing pension plans covering prior service, and continued participation in social security in addition to participation in the public employees retirement system as required in Chapter 145. of the Revised Code;

(2) The continuation of collective bargaining rights;

(3) The protection of individual employees against a worsening of their positions with respect to their employment;

(4) Assurances of employment to employees of such transit systems and priority reemployment of employees terminated or laid off;

(5) Paid training or retraining programs;

(6) Signed written labor agreements.

Such arrangements may include provisions for the submission of labor disputes to final and binding arbitration.

(Y) May provide for an maintain such security operations as are necessary for the protection of persons and property under its jurisdiction and control. Such employees as the board of trustees of a regional transit authority employs for that purpose are vested with the same powers of arrest as police officers under section 2935.03 of the Revised Code in protecting the property of the regional transit authority and the person and property of passengers. Before exercising such powers, each employee shall take an oath and give bond to the state in such sum that the board prescribes for the proper performance of his duties.

Such employees shall be required to complete training for the position to which they have been appointed as required by the Ohio peace officer training council as authorized in section 109.78 of the Revised Code, or be otherwise qualified. The cost of such training shall be provided by the regional transit authority.

(Z) May procure a policy or policies insuring members of its board of trustees against liability on account of

damages or injury to persons ond property resulting from any act or omission of a member in his official capacity as a member of the board or resulting solely out of his membership thereon.

(AA) May enter into any agreement for the sale and leaseback of qualified mass commuting vehicles for federal income tax purposes under section 168 (F) (8) of the Internal Revenue Code of 1954, as amended, which agreement may contain all necessary covenants for the security and protection of any lessor or the regional transit authority including, but not limited to, indemnification of the lessor against the loss of anticipated tax benefits arising from acts, omissions, or misrepresentations of the regional transit authority. In connection with any such transaction, the regional transit authority may contract for insurance and letters of credit and pay any premiums or other charges therefor. The fiscal officer shall not be required to furnish any certificate under section 5705.41 of the Revised Code in connection with the execution of any such agreement.

SECTION 306.36
OHIO REVISED CODE

306.36 Appropriation of property; payment in lieu of taxes

(A) The board of trustees of a regional transit authority may exercise the power of emnient domain to appropriate any land, rights, rights-of-way, franchise, power lines, easements, or other property, within or without the territorial boundaries of the regional transit authority, necessary or proper for the construction or efficient operation of any transit facility or access thereto under

its jurisdiction pursuant to the procedure provided in sections 163.01 to 163.22, inclusive, of the Revised Code, and subject to division (B) of this section, provided that a regional transit authority shall not proceed to so appropriate real property outside its territorial boundaries, until it has served at the office of the county commissioners of the county in which it is proposed to appropriate real property, a notice describing the real property to be taken and the purpose for which it is proposed to be taken, and such county commissioners have entered on their journal within thirty days after such service a resolution approving such appropriation.

(B) Nothing contained in sections 306.30 to 306.53, inclusive, of the Revised Code authorizes a regional transit authority to appropriate any land, rights, rights-of-way, franchises, or easements belonging to the state or a municipal corporation without the consent of the state or municipal corporation, and no regional transit authority shall exercise the right of eminent domain to acquire any certificate of public convenience and necessity, or any part thereof, issued to a motor transportation company by the public utilities commission of Ohio or by the interstate commerce commission of the United States, or to take or disturb other property or facilities belonging to any political subdivision, public corporation, public utility, or common carrier, which property or facility is necessary and convenient in the operation of such political subdivision, public corporation, public utility, or common carrier, unless provision is made for the restoration, relocation, or duplication of such property or facility, or upon the election of such political subdivision, public corporation, public utility, or common carrier, for the payment of compensation, if any, at the sole cost of the regional transit authority, provided:

(1) If any restoration or duplication of any property or facility proposed to be made under this division involves a relocation of such property or facility the new facility and location thereof shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or common carrier to compete in its original area of operation.

(2) If any restoration or duplication of any property or facility proposed to be made under this division involves a relocation of such property or facility, the regional transit authority shall acquire no interest or right in or to the appropriated property or facility until the relocated property or facility is available for use and until marketable title thereto has been transferred to the public utility or common carrier.

(C) When real property is acquired which is located outside the territorial boundaries of th regional transit authority and which is removed from the tax duplicate, the regional transit authority shall pay annually to the county treasurer of the county in which such property is located, commencing with the first tax year in which such property is removed from the tax duplicate, an amount of money in lieu of taxes equal to the smaller of the following:

(1) The last annual installment of taxes due from the acquired property before removal from the tax duplicate;

(2) An amount equal to the difference between the combined revenue from real estate taxes of all the taxing districts in which such property is located in the tax year immediately prior to the removal of such acquired property from the tax duplicate, and either:

(a) The total revenue which would be produced by

the tax rate of each such taxing district in the tax year immediately prior to the removal of such acquired property from the tax duplicate, applied to the real estate tax duplicate of each of such taxing districts in each tax year subsequent to the year of removal; or

(b) The combined revenue from real estate taxes of all such taxing districts in each tax year subsequent to the year of removal, whichever is the greater.

The county auditor of each county in which such property is located shall apportion each such annual payment to each taxing district as if such annual payment has been levied and collected as a tax.

Such annual payments shall never again be made after they have ceased.

The regional transit authority may be exempted from such payment by agreement of the affected taxing district or districts in the county in which such property is located.

SECTION 2506
OHIO REVISED CODE

2506.01 Appeal from decisions of any agency of any political subdivision

Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department or other division of any political subdivision of the state may be reviewed by the common pleas court of the county in which the principal office of the political subdivision is located, as provided in sections 2505.01 to 2505.45, inclusive, of the Revised Code, and as such

procedure is modified by sections 2506.01 to 2506.04, inclusive, of the Revised Code.

The appeal provided in sections 2506.01 to 2506.04, inclusive, of the Revised Code is in addition to any other remedy of appeal provided by law.

A "final order, adjudication, or decision" does not include any order from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority and a right to a hearing on such appeal is provided; any order which does not constitute a determination of the rights, duties, privileges, benefits, or legal relationships of a specified person; nor any order issued preliminary to or as a result of a criminal proceeding.

SECTION 2721.03
OHIO REVISED CODE

2721.03 Construction and validity of instrument

Any person interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule as defined in section 119.01 of the Revised Code, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under such instrument, constitutional provision, statute, rule, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

The testator of a will may have the validity of the will determined at any time during his lifetime pursuant to sections 2107.081 to 2107.085 of the Revised Code.

ARTICLE XVIII, SECTION 4, OHIO CONSTITUTION

XVIII § 4 Public utilities; acquisition

Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or produce of any such utility.